

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-463V

February 23, 2007

Not to be Published

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TIMOTHY JAMES CARPENTER, \*

Petitioner, \*

v. \*

SECRETARY OF THE DEPARTMENT OF \*

HEALTH AND HUMAN SERVICES, \*

Respondent. \*

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Clifford J. Shoemaker, Vienna, VA, for petitioner.

Linda S. Renzi, Washington, DC, for respondent.

Entitlement; petitioner  
agrees he cannot prove  
causation from vaccine

**MILLMAN, Special Master**

## **DECISION**<sup>1</sup>

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

Petitioner filed a petition on July 16, 1999 under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that he suffered an unspecified adverse reaction to hepatitis B vaccine received on March 29, 1994, April 29, 1994, and September 29, 1994.

On November 13, 2006, the undersigned issued an Order to Show Cause to petitioner to show why this case should not be dismissed.

On February 20, 2007, petitioner filed a Motion for Judgment on the Record, stating that “Petitioner does not feel that he can prove causation, as he cannot find an expert to support causation in this case.” Petitioner requested a short decision, rather than one detailing petitioner’s medical records.

## **DISCUSSION**

To satisfy his burden of proving causation in fact, petitioner must offer “(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury.” Althen v. Secretary of HHS, 418 F. 3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by “proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[,]” the logical sequence being supported by “reputable medical or scientific explanation[,]” *i.e.*, “evidence in the form of scientific studies or expert medical testimony[.]”

Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6<sup>th</sup> Cir. 1983), cert. denied, 469 U.S. 817 (1984). Petitioner must show not only that but for the vaccine, he would not have had the injury, but also that the vaccine was a

substantial factor in bringing about his injury. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

In the instant action, petitioner admits that he cannot prove causation in fact from the vaccination because he cannot obtain expert testimony to support his allegations. The medical records alone do not substantiate causation as the illness in question occurred prior to vaccination and there is no evidence of significant aggravation.

Petitioner has failed to make a prima facie case of causation in fact and failed to show that, but for hepatitis B vaccine, he would not have had his medical conditions. He has also failed to show significant aggravations of his medical conditions after vaccination.

### **CONCLUSION**

This petition must be dismissed. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance herewith.<sup>2</sup>

**IT IS SO ORDERED.**

February 23, 2007  
DATE

s/ Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.